

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 40-5-58 of the Official Code of Georgia Annotated, relating to
2 habitual violators and probationary licenses, so as to change certain provisions relating to
3 notification of habitual violator status; to provide for related matters; to repeal conflicting
4 laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Code Section 40-5-58 of the Official Code of Georgia Annotated, relating to habitual
8 violators and probationary licenses, is amended by revising subsections (b), (c), and (e) as
9 follows:

10 ~~"(b) When the records of the department disclose that any person has been arrested and~~
11 ~~convicted of a violation of Chapter 6 of this title, or of a valid local ordinance adopted~~
12 ~~pursuant thereto, of an offense occurring on or after January 1, 1976, which record of arrest~~
13 ~~and conviction, when taken with and added to previous arrests and convictions of such~~
14 ~~person as contained in the files of the department, reveals that such person is a habitual~~
15 ~~violation as defined in subsection (a) of this Code section, the department shall forthwith~~
16 ~~notify such person that upon the date of notification such person has been declared by the~~
17 ~~department to be a habitual violator, and that henceforth it shall be unlawful for such~~
18 ~~habitual violator to operate a motor vehicle in this state unless otherwise provided in this~~
19 ~~Code section. Notice shall be given by certified mail or statutory overnight delivery, with~~
20 ~~return receipt requested; or, in lieu thereof, notice may be given by personal service upon~~
21 ~~such person. In the event that at the time of determination the habitual violator had been~~
22 ~~issued a driver's license, such license shall be revoked by such notice and shall be~~
23 ~~surrendered to the department within ten days of notification of such determination. For~~
24 ~~the purposes of this chapter, notice given by certified mail or statutory overnight delivery~~
25 ~~with return receipt requested mailed to the person's last known address shall be prima-facie~~
26 ~~evidence that such person received the required notice. In addition to the procedure set~~

~~forth in this subsection, the sentencing judge or prosecutor in a conviction which~~
~~conviction classifies the defendant as a habitual violator may, at the time of sentencing,~~
~~declare such defendant to be a habitual violator. The judge or prosecutor shall, when~~
~~declaring a defendant to be a habitual violator, then give personal notice to such defendant~~
~~on forms provided by the department that henceforth it shall be unlawful for such habitual~~
~~violation to operate a motor vehicle in this state unless otherwise provided in this Code~~
~~section. The judge or prosecutor, as the case may be, shall within three days forward to the~~
~~department the order declaring that the defendant is a habitual violator, the notice of~~
~~service, with the defendant's driver's license or a sworn affidavit of the defendant declaring~~
~~that the driver's license has been lost, and the department's copy of the uniform citation or~~
~~the official notice of conviction attached thereto. The driver's license of any person who~~
~~is a habitual violator shall be revoked by operation of law immediately upon his or her~~
~~conviction for the offense that renders him or her a habitual violator. In the event that at~~
~~the time of becoming a habitual violator, such person has been issued a driver's license,~~
~~such license shall be surrendered immediately to the court or to the department.~~

(c)(1) Except as provided in paragraph (2) of this subsection or in subsection (e) of this
 Code section, it shall be unlawful for any person to operate any motor vehicle in this state
 after such person has ~~received notice that his or her driver's license has been revoked as~~
~~provided in subsection (b) of this Code section, been declared a habitual violator~~ if such
 person has not thereafter obtained a valid driver's license. Any person declared to be a
 habitual violator and whose driver's license has been revoked under this Code section and
 who is thereafter convicted of operating a motor vehicle before the department has issued
 such person a driver's license or before the expiration of five years from such revocation,
 whichever occurs first, shall be punished by a fine of not less than \$750.00 or by
 imprisonment in the penitentiary for not less than one nor more than five years, or both.
 Any person declared to be a habitual violator and whose driver's license has been
 revoked and who is convicted of operating a motor vehicle after the expiration of five
 years from such revocation but before the department has issued such person a driver's
 license shall be guilty of a misdemeanor.

(2) Any person declared to be a habitual violator as a result of three or more convictions
 of violations of Code Section 40-6-391 within a five-year period of time, as measured
 from the dates of previous arrests for which convictions were obtained to the date of the
 most recent arrest for which a conviction was obtained, and who is thereafter convicted
 of operating a motor vehicle during such period of revocation, prior to the issuance of a
 probationary license under subsection (e) of this Code section or before the expiration of
 five years, shall be guilty of the felony of habitual impaired driving and shall be punished

1 by a fine of not less than \$1,000.00 or by imprisonment in the penitentiary for not less
2 than one nor more than five years, or both."

3 "(e)(1) Notwithstanding any contrary provisions of this Code section ~~or any other Code~~
4 ~~section of this chapter~~, any person who has been declared a habitual violator and who has
5 had his or her driver's license revoked under subsection (b) of this Code section for a
6 period of five years and where two years have expired since the date on which such
7 person's license was surrendered or ~~an~~ a lost license affidavit was accepted, as provided
8 in subsection (e) of Code Section 40-5-61, ~~such person~~ may be issued a probationary
9 driver's license for a period of time not to exceed three years upon compliance with the
10 following conditions:

11 (A) Such person has not been convicted; of or pleaded nolo contendere to a charge; of
12 violating any provision of this chapter, Chapter 6 of this title, or any local ordinance
13 relating to the movement of vehicles for a period of two years immediately preceding
14 the application for a probationary driver's license;

15 (B) Such person has not been convicted; of or pleaded nolo contendere to a charge; of
16 a violation of any provision of this chapter which resulted in the death or injury of any
17 individual;

18 (C) Such person has successfully completed, prior to the issuance of the probationary
19 driver's license, a:

20 (i) A defensive driving course at a driver improvement clinic approved by the
21 department or a DUI Alcohol or Drug Use Risk Reduction Program as designated by
22 the department; and

23 (ii) A clinical evaluation and, if recommended as a result of such evaluation, enrolled
24 in a substance abuse program;

25 (D) Such person has not been convicted; of or pleaded nolo contendere to a charge; of
26 violating any provision of Title 3, relating to alcoholic beverages, or of violating any
27 provision of Chapter 13 of Title 16, relating to controlled substances;

28 (E) Such person shall submit a sworn affidavit that such person does not excessively
29 use alcoholic beverages and does not illegally use controlled substances or marijuana.
30 It shall be a misdemeanor to falsely swear on such affidavit and, upon conviction, the
31 probationary license shall be revoked: immediately by operation of law, and no ~~No~~
32 ~~probationary license shall be issued during the remainder of the revocation period; and;~~
33 provided, however, that no driver's license shall be issued for the remainder of the
34 original revocation period or for a period of two years from the date of conviction under
35 this subparagraph, whichever period is longer;

36 (F) Such person submits proof of financial responsibility as provided in Chapter 9 of
37 this title; and

(G) Refusal to issue a probationary driver's license would cause extreme hardship to the applicant. For the purposes of this subsection, the term 'extreme hardship' means that the applicant cannot reasonably obtain other transportation, and, therefore, the applicant would be prohibited from:

- (i) Going to his or her place of employment or performing the normal duties of his or her occupation;
- (ii) Receiving scheduled medical care or obtaining prescription drugs for which the applicant has a valid prescription;
- (iii) Attending a college or school at which he or she is regularly enrolled as a student;
- (iv) Attending regularly scheduled sessions or meetings of support organizations for persons who have addiction or abuse problems related to alcohol or other drugs, which organizations are recognized by the commissioner; or
- (v) Attending, under court order, any driver education or improvement school or alcohol or drug treatment program or course approved by the court which entered the judgment of conviction resulting in revocation of his or her driver's license or by the commissioner.

(2) Application for a probationary driver's license shall be made upon such forms as the commissioner may prescribe. Such forms shall require such information as is necessary for the department to determine the need for such license. All applications shall be signed by the applicant before a person authorized to administer oaths.

(3) Upon compliance with the above conditions and the payment of a fee of \$210.00, or \$200.00 when processed by mail, such person may be issued a probationary driver's license by the department. Upon payment of a fee in an amount the same as that provided by Code Section 40-5-25 for issuance of a Class C driver's license, a person may be issued a replacement for a lost or destroyed probationary driver's license issued to him or her.

(4) A probationary driver's license shall be endorsed with such conditions as the commissioner deems necessary to ensure that such license ~~will~~ shall be used by the licensee only to avoid the conditions of extreme hardship. Such conditions may include the following restrictions:

- (A) Specific places between which the licensee may be allowed to operate a motor vehicle;
- (B) Routes to be followed by the licensee;
- (C) Times of travel;
- (D) The specific vehicles which the licensee may operate; and
- (E) Such other restrictions as the department may require.

(5) A probationary driver's license issued pursuant to this Code section shall become invalid upon the expiration of the period of the suspension or revocation of the driver's license of such person.

(6)(A)(i) Any probationary licensee violating the provisions of paragraph (4) of this subsection or operating a vehicle in violation of any conditions specified in this subsection shall be guilty of a misdemeanor.

(ii) Except as provided in division (iii) of this subparagraph, any probationary licensee violating any state law or local ordinance involving an offense listed in Code Section 40-5-54 or Code Section 40-6-391 shall be guilty of a felony and shall be punished by a fine of not less than \$1,000.00 or by imprisonment in the penitentiary for not less than one nor more than five years, or both.

(iii) Any probationary licensee violating any state law or local ordinance involving a felony offense listed in Code Section 40-5-54 shall be guilty of a felony and shall be punished as is provided for conviction of such felony.

(B) Any probationary licensee who is convicted of violating; or who pleads nolo contendere to a charge of violating; any state law or local ordinance involving an offense listed in Code Section 40-5-54 or Code Section 40-6-391 or any probationary licensee who is convicted of violating; or who pleads nolo contendere to a charge of violating; the conditions endorsed on his or her license; shall have his or her license revoked by the department. Any court in which such conviction is had or in which ~~said~~ such nolo contendere plea is accepted shall require ~~the~~ such licensee to surrender ~~the~~ his or her license to the court. The court shall forward ~~the~~ such license to the department within ten days after the conviction or acceptance of ~~the~~ such plea, with a copy of the conviction. Any person whose probationary license is revoked for committing an offense listed in Code Section 40-5-54 or Code Section 40-6-391 shall not be eligible to apply for a regular driver's license until the expiration of the original five-year revocation period during which the probationary license was originally issued or for a period of two years following the conviction, whichever is greater.

(C) If the commissioner has reason to believe or makes a preliminary finding that the requirements of the public safety or welfare outweigh the individual needs of a person for a probationary license, the commissioner, in his or her discretion, after affording the person notice and an opportunity to be heard, may refuse to issue the license under this subsection.

(D) Any person whose probationary driver's license has been revoked shall not be eligible to apply for a subsequent probationary license under this Code section for a period of five years.

(7) Any person whose probationary license has been revoked or who has been refused a probationary license by the department may make a request in writing for a hearing to be provided by the department. Such hearing shall be provided by the department within 30 days after the receipt of such request and shall follow the procedures required by Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' Appeal from such hearing shall be in accordance with Chapter 13 of Title 50."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.